BRUNEI REPORTS

EMRAN BIN HJ. MD. NOOR v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 1 June 1988]

[Bandar Seri Begawan – Criminal Appeal No. 11 of 1986]

Criminal Procedure – Leave to appeal against conviction out of time – Application for – Notice of application for leave to appeal against sentence contained grounds of appeal against conviction – Whether this notice can form notice to appeal against conviction – Sarawak, North Borneo and Brunei Court of Appeal Rules, Form 6 – Sarawak, North Borneo and Brunei (Courts) Order in Council 1951.

The appellant was convicted of culpable homicide not amounting to murder and sentenced to life imprisonment. He filed a notice of appeal on a form prescribed for notice of application for leave to appeal against sentence. However, in a marginal note on the form, the appellant was also asked to state as clearly as possible the grounds on which he desires "to appeal against (his) conviction". The appellant now applies to the Court of Appeal for leave to appeal against conviction out of time.

Held, allowing the application: The notice of application for leave to appeal against sentence, read in its proper context, contains grounds of appeal against conviction as well as sentence. It could therefore be argued that the grounds of appeal against conviction were lodged within time.

COURT OF APPEAL.

Joseph Linus for the appellant.

Ivan Leong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yang P. (delivering the ruling of the court): This is the appellant's application for leave to appeal against conviction out of time.

On 19 August 1986, he was convicted of culpable homicide not amounting to murder and sentenced to imprisonment for life. On 30 August 1986, he filed a notice of appeal on a form prescribed for notice of application for leave to appeal against sentence: Form 6 of the Sarawak, North Borneo and Brunei Court of Appeal Rules made under section 22 of the Sarawak, North Borneo and Brunei (Courts) Order in Council 1951. Curiously though, in a marginal note, the appellant is advised to fill in all the particulars and to state as clearly as possible grounds on which he desires "to appeal against your conviction". Be that as it may, the notice of 30 August 1986, read in its proper context, contains grounds of appeal against conviction as well as sentence. It could therefore be argued that the grounds of appeal against conviction were lodged within time.

The appellant has thus made a technical error here. In the circumstances, we are disposed to grant him the extension asked for.

Having heard counsel, we made the following order. Application granted for leave to appeal against conviction out of time on terms that proper grounds of appeal limited to the matters disclosed in the appellant's notice of appeal against sentence filed on 30 August 1986 (*vide* P.5–P.8 of the records of appeal) be lodged within four weeks. The hearing of the appeal to commence *de novo* at the next session. The matter of sentence is adjourned to the next session to be heard with, but subsequent to, the hearing of the appeal against conviction.

Order accordingly.

EVANGELINA E. SANTOS & ORS. v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 1 June 1988]

[Bandar Seri Begawan – Criminal Appeal No. 12 of 1987]

Criminal Procedure – Sentencing – Objections to facts stated by trial court – Benefit of doubt given to appellant – Deterioration in appellant's eye condition a medical matter – Not a matter for court to decide on an appeal against sentence – Penal Code, s. 489B.

The appellants pleaded guilty to a number of fraud offences under section 489B of the Penal Code. Their imprisonment sentences were as follows: the first appellant – three years, the second and third appellants – two years each. The appellants appealed against the sentences complaining that they were excessive.

Held, dismissing the second and third appellants' appeal and allowing the first appellant's appeal: (1) since the maximum sentence for an offence against section 489B of the Penal Code has been fixed at 15 years, it appears that those responsible for the Penal Code must have taken a very serious view of these offences which the court must reflect in sentencing;

(2) as there may be some substance in the first appellant's objections to the facts as stated by the trial court in sentencing them, the court will give the first appellant the benefit of the doubt. The first appellant's sentence is reduced to the same as that imposed on the other appellants, namely, two years;

(3) the second appellant's complaint of the deterioration in the condition of his eyes is a medical matter which a court cannot go into on an appeal against sentence;

(4) there is no reason to interfere with the sentences passed on the second and third appellants.

COURT OF APPEAL.

Appellants in person.

Ahmad Zakaria (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Godfrey J. (delivering the judgment of the court): These are appeals against sentence. The appellants were charged with a number of offences under section 489B of the Brunei Penal Code.

On 11 August 1987, they pleaded guilty to the charges, 12 in all, before Dato Sir Denys Roberts who sentenced them, in the case of Santos, to three years' imprisonment and in the cases of Lopez and Bagabaldo to two years' imprisonment. Section 489B is in the following terms:

"whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment of either description for a term which may extend to 15 years, and shall also be liable to a fine."

Since the maximum sentence for an offence against this section has been fixed at 15 years, it appears that those responsible for the Penal Code must have taken a very serious view of these offences which the court must reflect in sentencing.

The appellants are not represented before us. In their grounds of appeal, they complain only that the sentences passed on them were excessive. In their submissions to us, they have asked for leniency but have been unable to satisfy us that the sentences were in fact excessive. With one exception, they took no objection to the facts as stated by Dato Sir Denys Roberts in sentencing them. Dato Sir Denys Roberts said:

"These offences were part of a carefully planned and cleverly executed series of frauds against banks in Brunei Darussalam. The three defendants, with a man called Eduardo Ente who is not in court, decided to come to Brunei Darussalam early in July this year and to cash here a large number of stolen travellers cheques of various denominations mainly US$, but including some Deutschmark, some Sterling and some Swiss francs. In order to cash these travellers cheques, which appear to have been in blank, the second and third defendants were provided with forged passports, which had been stolen from their real owners. The second defendant used a passport in the name of Paul Limacher which contained his, the second defendant's, photograph which had been inserted in it instead of that of the real owner. Similarly the third defendant was provided with a passport in the name of Janis Romack, in which her photograph appears in place of that of the real owner.

When the group arrived in Brunei, they checked into a hotel and began their operations. It is the prosecution case, which is not disputed by any of the defendants, that the principal organizer was Eduardo Ente and that his main lieutenant was the first defendant, Mrs. Santos. This is borne out by the evidence of the defendants themselves as to how the proceeds were to be shared out. The second and third defendants were each to receive 10% of the proceeds for their parts and the remainder was to be divided equally between the first defendant and Eduardo Ente.

Between 6 and 9 July, the three defendants went from bank to bank, collecting money from them by means of the travellers cheques. These were signed by either the second or third defendant, using their forged passports in support. On each such occasion the money, when received from the bank, was handed to the first defendant. However, on 9 July, when the second defendant attempted to cash some Deutschmark travellers cheques in the Standard Chartered Bank, a bank officer became suspicious of him, the police were called and he was arrested. It is worth observing that it was only as a result of the very quick reaction of the Royal Brunei Police Force that the second and third defendants were caught and brought here for trial.

The majority of the proceeds of the travellers cheques was converted into two drafts each for US$15,000. These drafts have not yet been recovered, though all banks have been warned not to cash them and there is some possibility that this money may be recovered. Apart from these two drafts a sum of B$12,392.60 is still missing. The total amount secured by virtue of these frauds was $76,450.91. There was found in the possession of the first and third defendants a quantity of travellers cheques and currency of a value of $12,391.60."

The exception to which we have referred concerns what was said by Dato Sir Denys Roberts about the evidence, particularly that of the appellant, Santos, given in mitigation. He appears to have concluded on the basis of this evidence that Santos played a more important part in these frauds and was doing better out of them than her co-appellants.

She submitted to us in effect that in fact this was one common enterprise with one common intention in which she played no more significant a part than the others. She suggested that Dato Sir Denys Roberts misunderstood her evidence in concluding that she had told him that she was to receive 50% of the proceeds of the frauds as distinct from the 10% each to be retained by

them. We think it is just possible that there may be some substance in these points.

In these circumstances, we think it right to give Santos the benefit of the doubt. We will reduce her sentence to the same as that imposed on the others, namely, two years, and her appeal is allowed to that extent.

A special point arises in the case of Lopez. He complains that he has an eye complaint for which, as a foreigner, he cannot get treatment in prison unless he pays for it and that he cannot afford to do so. If we were satisfied that all this was correct, we would have released him so as to enable him to receive the necessary treatment in the Philippines from where he comes, but we do not accept that it is correct.

The prosecution, at our instance, had laid before us a translation of a medical report dated 28 March 1988, addressed to the Director of Prisons, and signed by a senior specialist opthamologist at RIPAS Hospital, Brunei Darussalam. It is in the following terms:

"Referring to your letter ref. 44/228/87 dated 21 March 1988 for your information examinations have been carried out for several times on Mr. Lopez at the Eye Clinic, RIPAS Hospital.

From the outcome of the examinations it was found that his right eye has long-standing cataract and was not recently contracted. Thus poor eyesight was not something newly experienced by him; in fact might have already been for years.

Regarding treatment by operation I am of the opinion that it will not improve his eyesight and the treatment on such patient can only be performed on specially selected patients only and considered effective for them to lead their daily lives.

In view of the factors I have mentioned above there is no treatment required to be done on him."

We were still anxious to be assured that Mr. Lopez was wrong in believing that if you are a foreigner you are not going to be treated free of charge in a Brunei prison. Again at our request, the prosecution obtained from the Permanent Secretary of the Ministry of Health a letter dated 1 June 1988 which is in these terms:

"This is to certify that all cases brought in by the police and those in custody, prisoners and detainees are exempted from paying any hospital charges currently adopted in all hospitals in Negara Brunei Darussalam."

Although the certificate does not say so, we assume that that applies to foreigners as well as to citizens of Brunei Darussalam.

Mr. Lopez complains that there has been a deterioration in the condition of his eyes and, indeed that may well happen to those who are unfortunate enough to suffer, for example, from cataract. But these are medical matters and as it seems to us are not matters into which the court can go into on an appeal against sentence. They are matters for the doctor, not for the court.

In these circumstances, we see no reason to interfere with the sentence passed on Lopez. Nor do we see any reason to interfere with the sentence passed on Bagabaldo. Given the maximum penalty of 15 years and all the other material factors present in the case, these sentences appear to us to be lenient enough already. We do not ignore the personal circumstances of any of the appellants but these are, of course, matters which they ought to have taken into account for themselves before they embarked upon these frauds.

The appeals of Lopez and Bagabaldo are accordingly dismissed but as we have said, to the extent indicated, the appeal of Santos will be allowed.

Order accordingly.